**THE HON'BLE SRI JUSTICE G.CHANDRAIAH**

**W.P.NO.11130 OF 2008**

**O R D E R**

Heard both the counsel.

2. The case of the petitioner, as stated in the writ affidavit, is that he is the owner and possessor of an extent of Ac.1.50 cents in Sy.No.790 and an extent of Ac.0-25 cents in R.S.No.604/2J of Palacherla village, Rajanagaram Mandal, East Godavari District. The respondents sought to acquire an extent of Ac.0-01 cent in Sy.No.790 and an extent of Ac.0-25 cents in Sy.No.604/2J belonging to the petitioner, for the purpose of excavation of main canal under Venkatanagaram Pumping Scheme and accordingly a notification was issued under Section 4-A of the Land Acquisition Act 1894. Even before finalization of the acquisition proceedings, the Irrigation Department has changed the alignment of the canal and the grievance of the petitioner is that because of change in alignment, his property to an extent of Acs.0-70 cents in Sy.No.790/3 will be affected and the said extent is more than the extent which was initially notified. Change in alignment to the original notification has been prepared and an errata in this regard has been approved by the respondents in Ref.No.B1.6333/06 dated 1.6.2007. Earlier when the respondents sought to acquire more than the extent that is notified in Sy.No.604/2J, the petitioner filed writ petition before this court in W.P.No.5111/07 and this court by order dated 24.7.2007 directed that petitioner shall not be dispossessed from any land in excess of Acs.0-14 cents, which is notified for acquisition. The petitioner alleged that due to the proposed change of alignment of the canal, he is losing an extent of Acs.0-69 cents in Sy.No.790/3. The case of the petitioner is that if the digging of the canal is straight without curving the same, as stipulated in the original notification, the land of the petitioner need not be acquired, except the land o f Acs.0-17 cents in Sy.No.604/J. The specific allegation of the petitioner is that in order to facilitate T.Venkat Laxmi, the neighbouring land owenr, the alignment of the canal has been changed and that her property of Ac.0-98 cents in Sy.No.790/3 which was originally notified on 8.11.2006 was totally reduced to an extent of Ac.0-24 cents in Sy.No.780/2. Therefore, the petitioner filed the present writ petition for a

direction to the respondents to confine acquisition only to the extent mentioned in the initial notification dated 8.11.2006 and to quash the errata approved by the official respondents on 1.6.2007.

3. The Revenue Divisional Officer and Land Acquisition Officer, Rajahmundry, East Godavari District filed counter affidavit on behalf of the respondent no.1. In the counter affidavit it is stated that the Venkatanagaram Pumping Scheme (V.N.P. Scheme) is a major irrigation project. The land plan schedules and requisition in proforma-I, were received from Executive Engineer, Musurumilli Division, Dowlaiswaram for acquisition of Acs.55-40 cents of land in R.S.No.588/1 etc. in Palacharla village of Rajanagaram Mandal for excavation of main canal under Venkatanagaram Pumping Scheme vide Lr.No.E.E,/Musurumilli/Divin/DWI/DB/JTO/FL/1-37M dated 24.11.2006. The land plan and schedules were sent to Tahsildar, Rajanagaram for inspection of the land and to submit land acquisition proposals. The Tahsildar, Rajanagaram has submitted report with land acquisition proposals for an extent of Acs.45-06 cents in R.S.No.588/1 etc of Palacharla village vide Ref.A/508/06 dated 24.10.2006. The Tahsildar, Rajanagaram reported that he has inspected the land proposed for acquisition under V.N.P. Scheme and submitted that the proposed lands for acquisition stands classified as Government dry in village accounts. The draft note was approved for an extent of Acs.45-06 cents. By the time of approval of draft declaration, the requisition department has sent revised land proposal schedules for an extent of Acs.43.03 cts. in their Lr.No.EE/Musurumilli/Divn/DWI/DB/JTO/FL/1-37M dated 25.11.2006. Hence the draft declaration was submitted for an extent of Acs.44-03 cents and the same was approved to an extent of Acs.44-03 cents only. The Executive Engineer, Musurumilli Division, Dowleswaram has submitted revised land proposal schedules duly reducing the land widths required for dumping of spoil sand after obtaining undertaking from the land owners. Based on the revised land proposal schedules the lands were resurveyed and measured and after completion of survey, the correct extent that fell under the line of alignment was Acs.30-68 cents instead of Acs.44.03 cents. In view of the above, errata to the original draft notification and draft declaration was required to be issued. Errata as proposed to draft notification

and draft declaration was approved by the Special Collector (L.A.), Indira Sagar Project, Rajahmundry in the reference No.Ref.B1/633/06 dt 8.11.06 and 11.1.07. Accordingly errata for an extent of Acs.30.68 cents to DN and DD were prepared and they were approved by the Special Collector, (LA) Indira Sagar Project, Rajahmundry in the Ref.No.B1/633/06 dated 1.6.07. The land proposed for acquisition was handedover to irrigation Department. The petitioner already filed a W.P.No.5111/07 and a detailed counter was also filed and this court passed on 24.7.2007 by allowing the writ petition with regard to the extent of Acs.0-14 cents in R.S.No.604/2J of Palacherla village, directed that the petitioner shall not be dispossessed from any land in excess of Ac.0-14 cents that is notified for acquisition. With these averments *intera alia*, the writ petition was sought to be dismissed.

4. It is well settled that the petitioner cannot be the authority to decide the necessity for change of alignment. As per the averments made in the counter affidavit it could be seen that based on the representation of the ryots to reduce the land widths to the extent required for excavation of canal and as they gave an undertaking that they will allow to dump the excavated spoil in their lands without claiming compensation, the Department decided to reduce the widths and submitted revised proposals. And an errata in that regard was approved by the Special Collector (LA) ISP Rajahmundry and the substance of errata was published in the locality. In view of these averments, inter alia, in the counter affidavit, I do not find any reason to interfere with the errata approved by the respondents and as per the judgment of the Apex Court in ***STATE OF T.N. v. MAHALAKSHMI AMMAL***[1] once errata was published, it dates back to the date of initial Section 4(1) notification, and it cannot be considered to be a fresh notification issued under Section 4(1). The relevant portion is extracted as under:

> 8. It is true that the Government having realised that the lands were initially notified to be acquired but did not cover the survey numbers being situated in the adjacent villages, the errata notification was published and included to lands in Surveys Nos. 2/5, 2/11 and 2/12. Once errata was published, it dates back to the date of initial Section 4(1) notification, namely, 26-6-1978. It cannot be considered to be a fresh notification

issued under Section 4(1). It is not in dispute that the respondents, in fact, filed their objections to the notice issued under Section 5-A and Rule 3 of the rules made by the State Government. Shri Sivasubramaniam, is unable to place before us the nature of the objections raised by the respondent-petitioners. But the fact remains that the respondents had the opportunity and, in fact, they did participate in Section 5-A enquiry. Therefore, the declaration made under Section 6 does not get vitiated.

5. In view of the above facts and circumstances, I do not find any merit in the writ petition and the same is dismissed. No costs.

AVS

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09—04—2013

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[1] (1996)7 SCC 269